

REMARKS

Claims 1, 3-10 and 13-31 are in the case. Claims 24-31 are withdrawn. Claims 11-12 and 32-33 were cancelled in an earlier response and claim 2 is cancelled without prejudice herein. Claims 1, 13 and 24 are amended herein. Applicant respectfully requests that this amendment be entered after final, pursuant to 37 CFR 1.116(b)(2) and MPEP 714.12. It is submitted that this amendment places the claims in condition for allowance, and that the amendment was not earlier submitted because it is being made in response to issues raised by the Examiner during the interview conducted on April 29, 2008 and in the pending office action.

Claim 2 has been rejected under 35 U.S.C. 112, second paragraph. While Applicant does not concede that this rejection is proper, claim 2 has been cancelled in order to expedite prosecution.

Claims 1-5 and 7-9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Grinshpun (U.S. Patent No. 6,226,943). Claims 6, 13-20, and 22-23 stand rejected under 35 U.S.C. 103(a) as being obvious over Grinshpun combined with Charlson (U.S. Patent No. 6,125,608).

It is the Examiner's position that the Grinshpun insulating member is formed of a single rigid insulating material, of which some portions are more rigid than others. Applicant respectfully disagrees with the interpretation of Grinshpun's panel as being formed of a rigid insulating material. Grinshpun describes a panel in which "at least a portion of the foam sheet adjacent to the groove is compressible and resilient." (Col. 3, lines 52-54, emphasis added). Grinshpun explains that, as a result, "areas of the foam sheet adjacent to the groove may be compressed" and that "the compressible and resilient portion of the foam will then expand after the support member is inserted."

Applicant notes that "resilient" and "rigid" are *antonyms* – i.e., a "resilient" material as disclosed by Grinshpun is the *opposite* of a "rigid" cellular material as claimed by Applicant. See, for example, <http://encarta.msn.com/thesaurus/resilient.html>. Moreover, the person of skill in the art would understand that a rigid cellular insulating material would not be compressible and resilient. Grinshpun himself clearly considers rigid foams to be something different and distinct from compressible, resilient foams – see for example col. 4, lines 39-41, where "rigid foam" and "compressible and resilient foam" are referred to in the alternative. Thus, even prior

to the present amendment Applicant's claims, which require a single unitary insulating member formed of a single rigid cellular insulating material, cannot be anticipated by Grinshpun.

However, in order to expedite prosecution and even further distinguish Grinshpun, claim 1 has been amended to recite that the single unitary insulating member has substantially uniform rigidity. It is respectfully submitted that this feature is clearly not disclosed by Grinshpun, and that in fact Grinshpun teaches away from this feature.

The compressible, resilient portions are an essential feature of Grinshpun's foam sheet, allowing a tight fit around a support member received in the groove. The compressible portions also allow the support members to be inserted into the groove without tearing the foam. (Grinshpun, col. 3, lines 52-63.) Accordingly, eliminating the compressible portions would constitute a wholesale reconstruction of the Grinshpun system. Charlson would not have suggested such a reconstruction, nor is Charlson cited to provide such a suggestion.

Moreover, Applicant notes that Figure 14 from Charlson, to which the Examiner directs Applicant's attention, is a cross-section of an insulated wall cavity around a vertical framing member. Accordingly, Applicant questions the Examiner's assertion that a "sheathing member disclosed by Charlson could be considered a joist header," since Figure 14 has nothing to do with floor framing or floor joists.

Applicant respectfully submits that the amended claims are patentable over the art of record, and respectfully requests allowance.

Withdrawn claim 24 has been amended to include all of the structural limitations of claim 13, which is believed to be allowable, and thus rejoinder is respectfully requested.

It is believed that no fees are due with this submission. Please apply any charges or credits to deposit account 06-1050, referencing Attorney Docket No. 10189-002001.

Applicant : Joel A. Schwartz
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Respectfully submitted,

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/Celia H. Leber/
Celia H. Leber
Reg. No. 33,524

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (877) 769-7945

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